

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOHN ALLEN LANOUE,
#81951

Plaintiff,

vs.

CONNIE BISBEE, *et al.*,

Defendants.

3:12-cv-00591-RCJ-VPC

SCREENING ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff's application to proceed *in forma pauperis* is granted (ECF #1). As discussed below, plaintiff's complaint must be dismissed for failure to state a claim for which relief may be granted.

I. Screening Pursuant to 28 U.S.C. § 1915A

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010); *Balistreri v. Pacifica Police Dep't*, 901 F.2d. 696, 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation

1 was committed by a person acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

2 In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation
3 Reform Act of 1995 (PLRA), a federal court must dismiss a prisoner's claim, "if the allegation of
4 poverty is untrue," or if the action "is frivolous or malicious, fails to state a claim on which relief may
5 be granted, or seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C.
6 § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief can be granted is
7 provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard under
8 § 1915 when reviewing the adequacy of a complaint or an amended complaint. When a court dismisses
9 a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with directions
10 as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could
11 not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

12 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v.*
13 *Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a claim
14 is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that
15 would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making
16 this determination, the court takes as true all allegations of material fact stated in the complaint, and the
17 court construes them in the light most favorable to the plaintiff. *See Warshaw v. Xoma Corp.*, 74 F.3d
18 955, 957 (9th Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards than
19 formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404
20 U.S. 519, 520 (1972) (per curiam); *Hebbe*, 627 F.3d at 342. While the standard under Rule 12(b)(6)
21 does not require detailed factual allegations, a plaintiff must provide more than mere labels and
22 conclusions. *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007). A formulaic recitation
23 of the elements of a cause of action is insufficient. *Id.*, see *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

24 Additionally, a reviewing court should "begin by identifying pleadings [allegations] that,
25 because they are no more than mere conclusions, are not entitled to the assumption of truth." *Ashcroft*
26 *v. Iqbal*, 129 S.Ct. 1937, 1950 (2009). "While legal conclusions can provide the framework of a

1 complaint, they must be supported with factual allegations.” *Id.* “When there are well-pleaded factual
2 allegations, a court should assume their veracity and then determine whether they plausibly give rise to
3 an entitlement to relief. *Id.* “Determining whether a complaint states a plausible claim for relief [is] a
4 context-specific task that requires the reviewing court to draw on its judicial experience and common
5 sense.” *Id.*

6 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed *sua*
7 *sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based
8 on legal conclusions that are untenable (e.g., claims against defendants who are immune from suit or
9 claims of infringement of a legal interest which clearly does not exist), as well as claims based on
10 fanciful factual allegations (e.g., fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S.
11 319, 327-28 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

12 **II. Instant Complaint**

13 Plaintiff, who is currently incarcerated at Northern Nevada Correctional Center
14 (“NNCC”), has sued several Nevada Parole Board Commissioners. Plaintiff alleges that defendants have
15 violated his Fourteenth Amendment rights.

16 Plaintiff claims that he has been denied parole—despite the fact that his prison and
17 criminal records show that he would be a good candidate—solely because he is a sex offender. Even
18 assuming his allegations are true, however, there is no federal constitutional right to parole in Nevada.
19 Nevada Revised Statute 213.10705 provides that the grant of parole is an act of grace by the state, in
20 which no liberty interest exists. *See Severance v. Armstrong*, 96 Nev. 836, 839, 620 P.2d 369, 370
21 (Nev.1980) (“NRS 213.1099 does not confer a legitimate expectation of parole release and therefore
22 does not create a constitutionally cognizable liberty interest sufficient to invoke due process.”). Thus,
23 plaintiff cannot state a claim for violation of his Fourteenth Amendment due process rights or any other
24 constitutional right for denial of parole. Accordingly, plaintiff’s complaint is dismissed without leave
25 to amend as it is clear from the face of the complaint that amendment would be futile.

1 This court also certifies that any *in forma pauperis* appeal from its order would not be
2 taken "in good faith" pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge v. United States*, 369 U.S. 438,
3 445 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977) (indigent appellant is permitted to
4 proceed *in forma pauperis* on appeal only if appeal would not be frivolous).

5 **III. Conclusion**

6 **IT IS THEREFORE ORDERED** that plaintiff's application to proceed *in forma*
7 *pauperis* (ECF #1) without having to prepay the full filing fee is **GRANTED**; plaintiff shall not be
8 required to pay an initial installment fee. Nevertheless, the full filing fee shall still be due, pursuant to
9 28 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act of 1996. The movant herein is
10 permitted to maintain this action to conclusion without the necessity of prepayment of fees or costs or
11 the giving of security therefor. This order granting *in forma pauperis* status shall not extend to the
12 issuance of subpoenas at government expense.

13 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915, as amended by the
14 Prisoner Litigation Reform Act of 1996, the Nevada Department of Corrections shall pay to the Clerk
15 of the United States District Court, District of Nevada, 20% of the preceding month's deposits to the
16 account of John Allen Lanoue, **Inmate No. 81951** (in months that the account exceeds \$10.00) until the
17 full \$350 filing fee has been paid for this action. The Clerk shall send a copy of this order to the
18 attention of Albert G. Peralta, Chief of Inmate Services for the Nevada Department of Corrections, P.O.
19 Box 7011, Carson City, NV 89702.

20 **IT IS FURTHER ORDERED** that, even if this action is dismissed, or is otherwise
21 unsuccessful, the full filing fee shall still be due, pursuant to 28 U.S.C. §1915, as amended by the
22 Prisoner Litigation Reform Act of 1996.

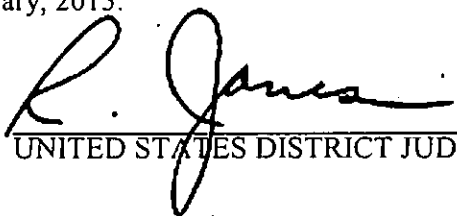
23 **IT IS FURTHER ORDERED** that the Clerk shall **FILE** the complaint (ECF #1-1).
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25 **IT IS FURTHER ORDERED** that plaintiff's complaint (ECF #1-1) is **DISMISSED**
26 **with prejudice and without leave to amend** for failure to state a claim for which relief may be granted.

1 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly
2 and close this case.

3 **IT IS FURTHER ORDERED** that this court **CERTIFIES** that any *in forma pauperis*
4 appeal from this order would not be taken "in good faith" pursuant to 28 U.S.C. § 1915(a)(3).

5 DATED this 29th day of January, 2013.

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8 UNITED STATES DISTRICT JUDGE
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